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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 MARC WOLSTENHOLME,
16 Plaintiff,
17 v.
18 RIOT GAMES, INC.,
19 Defendant.

20 Case No. 2:25-cv-00053-FMO-BFM

21 *Hon. Fernando M. Olguin*

22 **DECLARATION OF JOSHUA M.
23 GELLER IN SUPPORT OF
24 MOTION TO DISMISS FIRST
25 AMENDED COMPLAINT
26 PURSUANT TO FRCP 12(B)(6)**

27 Date: February 27, 2025
28 Time: 10:00 a.m.
Crtrm: 6D

29 [Notice of Motion and Motion to
30 Dismiss and [Proposed] Order filed
31 concurrently herewith]

32 GREENBERG GLUSKER FIELDS CLAMAN
33 & MACHTINGER LLP
34 2049 Century Park East, Suite 2600
35 Los Angeles, California 90067

DECLARATION OF JOSHUA M. GELLER

I, Joshua M. Geller, declare:

3 1. I am an attorney duly licensed to practice in all the courts of the State
4 of California and I am counsel of Greenberg Glusker Fields Claman & Machtlinger
5 LLP, attorneys of record for Defendant Riot Games, Inc. (“Riot”). The facts set
6 forth herein are of my own personal knowledge and if sworn I could and would
7 testify competently thereto under oath. I submit this declaration in support of
8 Riot’s Motion to Dismiss the First Amended Complaint filed by Plaintiff Marc
9 Wolstenholme (“Wolstenholme”) for failure to state a claim pursuant to Fed. R.
10 Civ. Pro. 12(b)(6).

11 2. On or about January 13, 2025, Wolstenholme filed a First Amended
12 Complaint, Dkt. No. 11 (“FAC”). The Notice of Electronic Filing of that document
13 was circulated by email on January 15, 2025.

14 3. In that First Amended Complaint, Mr. Wolstenholme references an
15 exchange of correspondence in November 2021. *See* FAC ¶¶ 14–15. He states that
16 he notified Riot of the alleged infringement in November 2021, and that Riot’s
17 “legal representatives responded with threats of extensive legal fees.” *Id.* I
18 understand Mr. Wolstenholme to be referencing a letter sent by my colleague,
19 Aaron J. Moss to Mr. Wolstenholme, on which I was copied, dated November 28,
20 2021. A true and correct copy of that letter from Mr. Moss to Mr. Wolstenholme is
21 attached as **Exhibit A**.

22 4. On January 16, 2025, I emailed Mr. Wolstenholme informing him that
23 Riot intended to move to dismiss the First Amended Complaint under Federal Rule
24 of Civil Procedure 12(b)(6) for failure to state a claim. I explained the legal basis
25 for the motion and offered to have a further telephone call to discuss. A true and
26 correct copy of my email to Mr. Wolstenholme is attached as **Exhibit B**.

27 5. Mr. Wolstenholme responded to my January 16 email on January 17,
28 stating that he would “call [me] for a Rule 7-3 Meet and Confer” and requesting a

1 “meeting agenda.” I responded on January 18 and provided a detailed summary of
2 the legal arguments that Riot intended to raise in connection with its motion to
3 dismiss, along with the applicable case law. A true and correct copy of that
4 correspondence is attached as **Exhibit C**.

5 6. Mr. Wolstenholme and I spoke on the telephone on January 20. We
6 discussed the various legal bases for the motion to dismiss. I explained Riot's view
7 that these legal deficiencies could not be corrected by amendment, and so the only
8 proper course would be for Mr. Wolstenholme to dismiss his First Amended
9 Complaint, and that if he would not do so, Riot would proceed with the instant
10 motion.

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12 I declare under penalty of perjury under the laws of the State of California
13 that the foregoing is true and correct.

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Executed this 27th day of January, 2025 at Los Angeles, California.

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/s/ Joshua M. Geller

Joshua M. Geller